

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the	)	
Subscriber Changes Provisions	)	CC Docket No. 94-129
of the Telecommunications Act	)	
of 1996	)	
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	
	)	
Net2000 Request for Waiver	)	

**PETITION FOR EXPEDITED WAIVER**

Net2000 Communications, Inc. ("Net2000"), and TruCom Corporation

("TruCom") (jointly, the "Petitioners") by their attorneys and pursuant to Section 1.3 of the Commission's Rules, respectfully petition the Commission to grant a limited waiver of 47 C.F.R. Sections 64.1100 – 64.1190 as required to transfer certain presubscribed business customers of Net2000 to TruCom without first obtaining each subscriber's individual authorization and verification.<sup>1</sup> In addition, Petitioners respectfully request expedited treatment of this petition, to the extent necessary, to allow Petitioners to effectuate the proposed transfer on or before *November 30, 1999*.

<sup>1</sup> Pursuant to 47 C.F.R. §64.1150, prior to submitting a preferred carrier change, carriers must either: (1) obtain the subscriber's written and signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided for the exclusive purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.

Net2000 is a competitive local exchange carrier ("CLEC") and interexchange carrier ("IXC") that maintains its headquarters in Herndon, Virginia. Net2000 operates throughout the mid-Atlantic and Northeast regions of the United States. The Company provides a wide array of local exchange and interexchange services to its customers. TruCom also is a CLEC and IXC, and its operations are focused principally in the Northeastern United States.

Net2000 initiated local service in early 1999 by reselling local exchange services purchased from incumbent local exchange carriers ("ILECs"). The company's longer term plan was to deploy its own local network services, and migrate its resale customer base to its own facilities platform as soon as practical. Net2000 has now deployed its own local switching and associated network facilities in many areas. Not surprisingly, it also has discovered that a portion of its resale customer base is located in geographic areas that are not reached by the Net2000 network, or cannot be served efficiently by the Net2000 network design. In order to execute its own business plan to operate as a facilities-based carrier on a going-forward basis, Net2000 is in the process of migrating the remaining resale customers to other carriers through a variety of means.

TruCom is a resale carrier in New York. Net2000 and TruCom have entered into an agreement whereby TruCom will purchase a small portion of Net2000's existing resale customer base in New York which cannot be migrated efficiently to service over the Net2000 network. All of the customers involved are business accounts. Each customer currently subscribes to Net2000 local services, and some are presubscribed to Net2000 interexchange services as well. Under the terms of the agreement between the parties, TruCom will replace Net2000 as both the local and long distance carrier (where applicable) for the customers involved.

Importantly, affected customers will be fully informed of the change. Net2000 will make reasonable attempts to contact each affected customer individually (either by telephone or in person) to explain the process, and inform the customer of its rights and options, including the customer's right to select a carrier other than TruCom. Net2000 will also send a notification letter to each of them. The letter will inform customers of the automatic switch in their telecommunications service provider to TruCom on or about November 30, 1999; that there will be no charge to the customer; that there will be no change to the way they dial or the customer service available to them; of the benefits of staying with TruCom; and of the option to change carriers to another service provider if they prefer. The notification letter will also invite customers to visit Net2000's website or dial a toll-free number for more information.

Moreover, after the migration, TruCom intends to send a second letter to affected customers, to ensure that consumers fully understand the situation. The post-migration notification letter welcomes customers to TruCom and informs them of any change in their calling plan and rates, and of the advantages of being served by TruCom. Further, if the customer is not satisfied with TruCom's service within the first 90 days, TruCom offers to pay any associated PIC change fee for the affected customer. After the migration, virtually all affected customers will be provided service at equivalent or lower rates.

Petitioners respectfully submit that the purposes of the Commission's LOA and verification rules would not be served by obtaining prior authorization and verification in order to switch the affected customers of Net2000 to TruCom, and that the public interest is served by granting a waiver of those rules in these limited circumstances. Further, the Petitioners fear that such a "re-presubscription" effort would prove confusing and frustrating to customers. Customers who do not understand the need to sign new forms, and fail to respond, could lose

service altogether or pay potentially higher casual calling rates. Accordingly, Petitioners believe that any potential benefits of obtaining new authorizations are outweighed by the potential detriments of such a program, and submit that all efforts will be taken to ensure that customers are not inconvenienced or harmed in any way. Indeed, Petitioners' goal is to be able to provide superior service and rates to affected customers as a result of the migration.

It is well-established that waiver of the Commission's Rules is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>2</sup> The party requesting waiver must show that the underlying purpose of the rule would not be served or would be frustrated, or that unusual or unique circumstances cause application of the rule to be unfair, unduly burdensome or contrary to the public interest.

In the instant case, the special circumstances requiring a deviation from the Commission's Rules include the need to ensure a seamless transition of local and long distance telecommunications service providers for the affected customers. If the Commission grants the waiver, it will protect against the possibility of customers losing local and/or long distance service altogether or being charged potentially higher casual calling rates. Moreover, the affected customers will be notified promptly of the process and their rights and options. By transferring customers by notification as described in this request, the policy goals of the Commission's authorization and verification requirements will be met more efficiently and consistent with the public interest. Indeed, the circumstances that justify grant of a waiver to

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<sup>2</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Petitioners are analogous to those that the Commission recently found to justify a waiver for several other carriers.<sup>3</sup>

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<sup>3</sup> See, e.g., *Excel Telecommunications, Inc., et al., Request for Waiver*, DA 99-1992, released September 29, 1999; *AT&T Corporation Request for Waiver*, DA 99-1718, released August 27, 1999; *MCI WorldCom, Inc. Request for Waiver*, DA 99-11549, released August 6, 1999; *Primus Telecommunications Group, Inc. Petition for Waiver*, DA 99-1550, released August 5, 1999; *Citizens Telecommunications Company Alliance Group Services, Inc. Joint Request for Waiver*, DA 99-1521, released July 30, 1999; *Startec Global Operating And PCI Communications, Inc. Request for Waiver*, DA 99-1461, released July 23, 1999.

Accordingly, Petitioners respectfully request that the Commission waive its authorization and verification rules as set forth above. Expedited action on this waiver is requested to the extent necessary to allow Petitioners to effectuate the customer migration on or before *November 30, 1999*. A limited waiver of the Commission's LOA and verification rules will allow a seamless transfer that will be transparent and advantageous to customers.

Respectfully submitted,

NET2000 COMMUNICATIONS, INC.  
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For TruCom

Dated: November 2, 1999

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**CERTIFICATE OF SERVICE**

I, Melissa Smith, hereby certify that on this 2<sup>nd</sup> day of November, 1999 a copy of the foregoing **PETITION FOR EXPEDITED WAIVER** was delivered by hand to the following:

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